

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6127 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

=====

1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

-----  
MAHENDRA R DIXIT

Versus

NARAYAN JOITARAM CHAUDHARY

-----  
Appearance:

M/S.VYAS ASSOCIATES for Petitioner

MR VM DHOTRE for Respondent No. 1

Mr. N.D. Gohil, Ld.GOV'T PLEADER for Respondent No. 2

-----

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 22/10/1999

ORAL JUDGEMENT

Looking to the nature of the case, Ld. counsel  
for the parties agree that the main petition itself now  
be disposed of, and accordingly I have heard Ld. counsel  
for the parties.

The Special Civil Application No. 6127 of 1997 is filed by Head Master-Cum-Managing Trustee, Janta Hindi Secondary School, Asarwa, Ahmedabad. This is against the orders of the Gujarat Secondary Education Tribunal dated 18-10-1991, 4-10-1996 and 29-7-1997.

The petitioner has filed this petition in the following circumstances. The services of the Respondent no.1 were terminated by order dated 3-1-1989, against which he filed an application No. 166/89 before the Gujarat Secondary Education Tribunal. Two other applications of the petitioner were already pending before the Tribunal. One was 1076/88 seeking promotion and another 8/89 against order of suspension that preceded dismissal order. On 29-11-1990 purshish were submitted before the Tribunal stating that a settlement has been arrived at between the parties and all the applications were withdrawn. However respondent no.1 filed two applications No. 96/91 and 137/91 for restoration of two applications being Application No. 8/89 and 1076/88. Application relating to restoration of Application No. 8/89 was later on rectified and was related to Application No. 166/89.

On 18-10-1991 the Tribunal in presence of Ld. counsel for the parties recorded that many issues arise for determination in the applications for restoration which inter alia include the contention raised by the present petitioner about maintainability of such application before the Tribunal. The Tribunal was of the opinion that the application requires consideration and therefore adjourned the case to next date for hearing the two applications. It also recorded that, since 2 applications are founded on same facts same shall be heard together.

Thereafter by order dated 4-10-1996 which was captioned as Application No. 166/89, the Tribunal instead of deciding the application for restoration but decided the main application No. 166/89 and granted substantive relief claimed by respondent no.1. On that date of hearing, Ld. counsel for the present petitioner was absent. Therefore the present petitioner moved an application No. 18/96 for reviewing and restoring the application No. 166/89. That application has been rejected by the Tribunal by order dated 29-7-1997.

At this juncture it may be noticed that the respondent no.1 had in fact preferred three substantive applications before the Tribunal. One application No.

1067/88, which pertains to his grievance about promotion, another application was 8/89 which related to his suspension before the dismissal, and application No. 166/89 which pertained to the dismissal order. As the order for dismissal has been made on 2-1-1989 to be effective from 3-1-89, the application about suspension has become infructuous and the surviving applications were concerning dismissal, and, if successful in the application, the question of promotion survives. Though the restoration application filed by respondent no.1 made a reference to Application No. 8/89 and 106/89 and did not make a mention of the application No. 166/89. This can assume to be a mere clerical error, in as much as the only live grievance was the subject matter of application No. 166/89 and not 106/89. I am informed that this correction was also made out by a separate order which perhaps led to some confusion about decision of application for restoration on merit.

Having heard Id. counsel for the parties, I am of the opinion that the petition deserves to be allowed on a short ground.

From the undisputed fact it is apparent that the applications no. 96/91 and 137/91 filed by respondent no.1 were only for the purpose of restoring already disposed of application No. 166/89 and 1067/88. By order dated 18-10-89 or subsequent order by making correction in the restoration application relating to application no. 166/89 no order has been made for restoring main applications. However under some misapprehension that the applications for restorations have been allowed by order dated 4-10-96 the Tribunal has disposed of application No. 166/89 concerning dismissal of respondent no.1 on merit. Obviously until the order dismissing the application no. 166/89 as withdrawn was recalled and the application was restored to original number after hearing the parties, the Tribunal could not have proceeded further to hear the application No. 166/89 on merit. After allowing application for restoration the Tribunal was under an obligation to give adequate opportunity of hearing to respective parties to proceed with the substantive application in accordance with law which could include opportunity to lead evidence if necessary, and to hear on merits of the issues. The Tribunal instead of hearing the application for restoration and deciding the same on merit including the question of its maintainability, has decided to dispose off application on merit in absence of counsel for the petitioner. The absence of counsel for the petitioner on the date fixed for hearing of the application for

restoration could have at best resulted in hearing of restoration application and its allowance if the Tribunal was satisfied on the existence of ground for its restoration. But in no case it could have heard and disposed of the main application no. 166/89 on merits without even intimating the parties its intention of hearing the substantive petition. Even if the Tribunal desires to hear the substantive applications also on merits simultaneously, the least it was required to give notice of such intention to parties. The decision of substantive application No. 166/89 is not only in respect of already disposed off application, without recalling the earlier order dated 29-11-90 in pursuance of purshish submitted by parties, but is also in breach of principles of natural justice. The order dated 4-10-1996 cannot be sustained and is hereby quashed.

If the order dated 9-10-1996 passed on Application No. 166/89 is quashed, the order dated 29-7-97 automatically lapses inasmuch as no order remains to be reviewed. Accordingly this petition is allowed. The impugned orders dated 4-10-1996 and 29-7-1997 are quashed and the Tribunal is directed to proceed further from the stage it has left on 18-10-1991 fixing the date of hearing for deciding the application for restoration by pointing out the issue involved in the restoration applications. The application for restoration shall be heard and decided within a period of three months from the service of the writ . If the Tribunal decides to allow the restoration application in question, the substantive petition may also be decided within six months thereafter. Rule is made absolute. In the facts & circumstances of the case no order as to costs.

-----

/vgn